In the High Court of Punjab and Haryana, Chandigarh.

CWP No. 15651 of 2006

Date of Decision: 29.9.2006

Rachhpal Singh

....Petitioner

Versus

State of Punjab and others.

....Respondents.

Coram:- Hon'ble Mr.Justice J.S. Khehar.
Hon'ble Mr. Justice S.D. Anand.

Present: Mr. Sanjay Majithia, Advocate
for the petitioner.

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J.S. Khehar, J.

The petitioner was inducted into the service of the Police Department as a Constable, on 21.11.1974. He qualified the Lower School Course in 1977, and was promoted to the rank of Head Constable on 23.11.1978. While holding the post of Head Constable, the petitioner qualified the Intermediate School Course in 1988, and was promoted to the rank of Assistant Sub Inspector on 15.4.1989.

While holding the post of Station House Officer at Police Station Nihal Singh Wala, a First Information Report was registered against the petitioner on 13.7.1993, under the provisions of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 1988 Act). The pleadings of the instant writ petition disclose, that the allegation levelled against the petitioner was, that he, while conducting a raid in search of

terrorists, recovered US $ 1,25,000, but deposited only US $ 40,000. In sum and substance, the allegation was, that the petitioner had misappropriated US $ 85,000. The trial conducted against the petitioner in furtherance of the aforesaid First Information Report, registered against him, culminated in his conviction at the hands of the Special Judge, Moga, who sentenced the petitioner to under rigorous imprisonment for a period of four years, and a fine of Rs.10,000/-, and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year.

On the basis of the conviction of the petitioner at the hands of the Special Judge, Moga, the Senior Superintendent of Police, Faridkot, dismissed the petitioner from service, by invoking clause (a) of the second proviso to Article 311(2) of the Constitution of India.

Dissatisfied with the order of dismissal passed by the Senior Superintendent of Police, Faridkot, on 9.1.2004, the petitioner preferred an appeal. The appeal preferred by the petitioner was disposed of by the Deputy Inspector General of Police, Faridkot Range, Bathinda, on 3.11.2004, wherein the petitioner was ordered to be reinstated till the final decision of the appeal preferred by the petitioner, before this Court. In the aforesaid context, it would be pertinent to mention, that the petitioner preferred Criminal Appeal No.2238-SB of 2003 before this Court, wherein he had challenged the order passed by the Special Judge, Moga, dated 17.11.2003. It would also be pertinent to mention, that while entertaining the appeal preferred by the petitioner, this Court had suspended the sentence imposed on the petitioner by the Special Judge, Moga, and as such, ordered his release on bail.

The Additional Director General of Police (Administration),

Punjab, issued a show cause notice to the petitioner dated 13.12.2005, informing the petitioner of his tentative decision to review the order passed by the Deputy Inspector General of Police, Faridkot Range, Bathinda, dated 3.11.2004. The petitioner, besides submitting his reply to the show cause notice, was also afforded an opportunity of hearing on 8.3.2006, during the course of which it was asserted by him, that he had been reinstated into service, keeping in view the instructions issued by the office of the Inspector General of Police, dated 6.7.2004, wherein it was asserted that the punishing authority cannot dismiss a police official, in case, the sentence imposed on such police official, after his conviction by a criminal Court, has been suspended by a higher Court. Rejecting the aforesaid claim of the petitioner, the Additional Director General of Police (Administration), Punjab, relying on the decision rendered by the Supreme Court in Deputy Director Collegiate Education Vs. S. Nagoor Meera, 1995 (2) SLR 379, ordered the dismissal of the petitioner from service on 7.8.2006.

The order dated 7.8.2006 passed by the the Additional Director General of Police (Administration), Punjab, is subject matter of challenge at the hands of the petitioner through the instant writ petition. During the course of hearing, learned counsel for the petitioner again placed reliance on the instructions issued by the office of the Inspector General of Police, dated 6.7.2004, and on the basis thereof reiterated, that it was not open to the respondents to take action against the petitioner during the pendency of the appellate proceedings initiated by the petitioner, before this Court against the order passed by the Special Judge, Moga, dated 17.11.2003, convicting the petitioner under the provisions of the 1988 Act.

We have examined the controversy in terms of the submissions

of the learned counsel for the petitioner. It is, however, not possible for us to accept the claim of the petitioner, that his conviction at the hands of the Special Judge, Moga, cannot be taken into consideration for inflicting a punishment on him, under clause (a) of the second proviso to Article 311 (2) of the Constitution of India. First and foremost, it would be pertinent to mention, that the instructions relied upon by the petitioner were subject matter of challenge in Civil Writ Petition No.12900 of 2006, wherein a person similarly situated as the petitioner, was reinstated into service after his sentence had been suspended. During the course of the pendency of the aforesaid writ petition realising, that the instructions were not in consonance with law, the same were ordered to be withdrawn. It is, therefore, not necessary for us to refer to the instructions issued by the office of the Inspector General of Police, dated 6.7.2004 for determining the present controversy. All the same, the question which needs to be adjudicated upon is, whether the petitioner has a right to be reinstated into service, despite the fact, that the competent authority had passed the order of dismissal from service on 9.1.2004, under clause (a) of the second proviso to Article 311 (2) of the Constitution of India. In so far as the instant issue is concerned, reference needs to be made only to the judgement of the Supreme Court, referred to in the impugned order passed by the Additional Director General of Police (Administration), Punjab, dated 7.8.2006, in S. Nagoor Meera's case (supra), wherein the Supreme Court observed as under:-

> "We need not, however, concern ourselves any more with the power of the appellate court under the Code of Criminal Procedure for the reason that what is relevant for clause (a) of the second proviso to Article 311 (2) is the "conduct which has

led to his conviction on a criminal charge" and there can be no question of suspending the conduct. We are, therefore, of the opinion that taking proceedings for and passing orders of dismissal, removal or reduction in rank of a government servant who has been convicted by a criminal court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said government servant-accused has been released on bail pending the appeal.

What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption by a criminal court. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated above , if he succeeds in appeal or other proceeding, the matter can always be reviewed in such a manner that he suffers no prejudice."

For the reasons recorded above, we find no merit in this petition. The same is, accordingly, dismissed.

(J.S. Khehar)
Judge.

(S.D. Anand)
Judge.

29.09.2006
sk.